

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE B.S.SREENIVASA RAO

WRIT PETITION NO.16013 OF 1998

Between :

1. U.Mohan Rao,
aged 65 years,
S/o U.Srinivasa Shanbhogue,
1/177, Behind Apoorva Complex,
Vibhudamanyanagar,
UDUPI.
2. U.Lakshman Rao,
since dead by lrs.
 - a) Smt.Shalini L.Rao,
Major,
W/o U.Lakshman Rao.
 - b) U.Shaila Rao,
aged 30 years,
D/o U.Lakshman Rao,
 - c) U.Santhosh Kumar Rao,
aged 28 years,
S/o U.Lakshman Rao,
 - d) U.Sampath Kumar Rao,
aged 26 years,
S/o U.Lakshman Rao
 - e) Smt.U.Sudha Rao,
aged 26 years,
D/o U.Lakshman Rao,
 - f) U.Sudheer Rao,
aged 24 years,
S/o U.Lakshman Rao

Petitioners 2(a) to 2(f) are
residing at No.1/22, D.N.Nagar,
J.P.Road, Andheri (W),
Bombay - 400 053.

B.S.R.

3. U.Vasudeva Rao,
aged 55 years,
S/o U.Srinivasa Shanbhogue,
4. U.Radhabai,
aged 58 years,
D/o U.Srinivasa Shanbhogue,
Panchamahal,
Mulki.
5. U.Nalini Bai,
aged 52 years,
D/O U.Srinivasa Shanbhogue,
Syndicate Bank,
Divisional Office,
D.O.Bellary.

(Petitioners 1 to 4 are also
represented by the 5th petitioner
who is their General Power of
Attorney Holder). . . PETITIONERS

(By Sri P.S.Manjunath, Adv.,)

AND :

1. State of Karnataka,
by its Chief Secretary
to Government,
Vidhana Soudha,
Bangalore - 560 001.
2. The Assistant Commissioner &
Sub-Divisional Magistrate,
Mangalore Sub-Division,
Mangalore,
(S.K.District).
3. Smt.Wilhelmina Gretta,
D/o Late Alex Karkada,
Kambla Cross Road,
Barke Garden,
Mangalore - 575 003.
4. B.Prabhakara,
S/o Shankar Ram Acharya,
Kambala Cross Road,
Barke Garden,
Mangalore - 575 003.

. . . RESPONDENTS

RSJ

(By Sri B.N.Pinto, Adv., for R-3 and R-4,
Sri H.Hanumantharayappa, HCGP for R-1 & R-2)

This Writ Petition is filed under articles 226 and 227 of the Constitution of India praying to quash the order of R-2 vide Annex.M dated 7-4-1998.

This Writ Petition coming on for hearing this day the court made the following :-

ORDER

Government Pleader is directed to take notice for R-1 and R-2.

This Writ Petition is filed under articles 226 and 227 of the Constitution of India by the Writ Petitioner to quash the order of the second respondent Assistant Commissioner and Sub-Divisional Magistrate, Mangalore Sub-Division Mangalore dated 7-4-1989 bearing No.RDC 3/79-80 and RDC 1/97-98 at Annex.D.

Heard the Counsel for the Writ Petitioner and the Government Pleader for Respondents 1 and 2 and the Counsel for R-3 and R-4. B&J

2. The brief facts of the case are that after coming into force of Karnataka Debt Relief Act the second respondent rided the business premises of Srinivasa Shanbhogue on 18-7-1976 and on 19-7-1976 and seized ornaments and other articles and also gold ornaments from the lockers of the Corporation Bank Brnaha at Mulki on 20-7-1976 under Mahazar dated 20-7-1976 as per Annex.A, the copy of the Mahazar. The second respondent distributed the gold ornaments to about 45 persons. Challenging the validity of the seizure and distribution petitioners' father Srinivas Shanbhogue filed W.P.No.5461/91 before this Court which was allowed by this Court and the copy of the judgment is as per Annex.B, but did not order restitution of articles already returned to 45 persons. The third respondent filed Writ Petition No.11634/97 before this Court making the first and second respondents as the parties to the proceedings seeking direction for immediate enquiry and disposal of her claim in RDC No.1/76-77 which was pending before the second respondent. The petitioners' father U.Srinivas Shanbhogue or his legal representatives were not made parties to the said writ petition. This Court in W.P.No.11634/97 by *BSJ*

its order dated 10-6-1997 directed the second respondent to dispose of the claim made by the third respondent within 3 months after issue of notice to the Writ Petitioner and other interested parties. The copy of the order is as per Annex.C. Aggrieved by the said order of the Single Judge in W.P.No.5467/79, Writ Appeal No.978/96 was filed and another Writ Appeal was also filed in W.A.1910/93 with respect to the order passed for return of the remaining seized articles. The order passed in the Writ Appeal is as per Annex.D. It has been directed in the said order that the respondents in that Writ Petition shall make over articles seized which are admittedly in the Treasury to the legal representatives of the Writ Petitioner within 30 days from the date of that order.

3. The third respondent and fourth respondents filed objections before the second respondent for the return of the articles which had been ordered by the Court. Alongwith their objections they filed schedule of the articles belonging to the original debtors alleged to be original debtors which have been pledged with Srinivas Shanbhogue. Copies of the objections as



per Annexures E and F. The petitioner filed her objections to the Claim Petitions of the third respondent and fourth respondent as per Annex.G and H respectively and the main dispute was that the articles shown in the objections had not been pledged and they do not find a mention in the Mahazar at Annex.A. Pursuant to the orders of this Court dated 7-4-1997 W.A.910/93 c/w 978/96 the second respondent returned to the petitioner the balance of the seized articles as per Mahazar dated 20-11-1997 and the copy of the said Mahazar is as per Annex.J. In the said mahazar also, articles claimed by the third respondent and the fourth respondent are not to be found is the contention of the present Writ Petitioner. The third respondent passed the order as per Annex.M dated 7-4-1998 in RDC 3/79-80 and 1/97-98 directing to return all 13 gold ornaments mentioned in the schedule to the order which has been assailed in this Writ Petition by the petitioner.

4. When it has been specifically contended by the petitioner before the second respondent that the gold ornaments mentioned in the objections enumerated in the applications of

RJ

I.A.III and I.A.IV as per Annexs.E and F are not available and they do not find an entry in the Mahazar dated 18-7-1976, 19-7-1976 and 20-7-1976 as per Annex.A and also in the Mahazar dated 20-11-1997 as per Annx.J. Still the third respondent held that the petitioner has failed to prove that the articles claimed by the third respondent and fourth respondent are not to be found in the list of jewels returned to the petitioner as per the orders of this court in W.A.1910/93 c/w W.A.978/96. It is contended by the Counsel for the Writ Petitioner that the second respondent has failed to note since both the list of articles seized on 18-7-1976, 19-7-1976 and 20-7-1976 and list of articles returned as per Court's order are already with the second respondent and if the articles claimed by the respondents 3 and 4 are not to be found in either of the lists the question of proving the negative by the petitioner that the articles claimed by the petitioner had not been pledged does not arise and the order passed to produce articles before the second respondent is not proper. As it is seen from the order passed by the second respondent, on 16-3-1998 as the petitioner was not absent order has been passed

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which has been challenged before this court with the list of articles as per the Annexed Schedule to be produced before the second respondent by the Writ Petitioner.

5. The main grievance of the Counsel for the Writ Petitioner is that without verification and holding proper enquiry and without giving opportunity to the Writ Petitioner the order has been passed by the second respondent which is against the principles of natural justice.

6. In the circumstances, the order passed by the second respondent Assistant Commissioner Sub-Divisional Magistrate, Mangalore Sub-Division dated 7-4-1998 in No.RDC 3/79-80 and 1/97-98 as per Annex.M is hereby set aside and the matter is remitted back to the second respondent to hold fresh enquiry giving opportunity to the Writ Petitioner and also Respondents 3 and 4 and to consider the objections and the contentions of the both parties and to dispose of the matter in accordance with law. *B. S. Hegde*

Accordingly the Writ Petition is allowed.

Sd/-
JUDGE

